

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MAYRA MARGARITA HERNANDEZ,

Plaintiff,

V.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 1:20-cv-00897-BAM

**ORDER DIRECTING CLERK OF COURT
TO RANDOMLY ASSIGN DISTRICT
JUDGE**

**FINDINGS AND RECOMMENDATIONS
RECOMMENDING PLAINTIFF'S
APPLICATION TO PROCEED IN FORMA
PAUPERIS BE DENIED**

(Doc. Nos. 2, 5)

FOURTEEN (14) DAY DEADLINE

On June 26, 2020, Plaintiff Mayra Margarita Hernandez (“Plaintiff”), proceeding through counsel, filed the complaint in this action.¹ (Doc. No. 1.) Plaintiff did not pay the filing fee and instead filed an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (Doc. No. 2).

On July 1, 2020, the Court ordered Plaintiff to complete and file an Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) – AO 239 because Plaintiff's application demonstrated that she may be receiving income well above the poverty threshold, and the information was insufficient for the Court to determine if she is entitled to

¹ Pursuant to General Order Number 615, this action is currently stayed pending further order of the Court. (Doc. No. 3.)

1 proceed without prepayment of fees in this action. (Doc. No. 4.) On July 23, 2020, Plaintiff
2 filed a completed Application to Proceed in District Court Without Prepaying Fees or Costs
3 (Long Form) – AO 239. (Doc. No. 5.)

4 According to Plaintiff's application, she is not currently employed and does not receive
5 any money from other sources. However, her spouse receives income in the amount of
6 \$3,000.00 per month and they have \$764.64 in a checking account. Plaintiff does not have
7 monthly expenses and her spouse's monthly expenses include \$647.40 per month in rent or
8 home-mortgage payments, \$450.00 per month for utilities, \$800.00-\$900.00 per month for
9 food, \$80.00 per month for clothing, \$80.00 per month for laundry and dry-cleaning, \$160.00-
10 \$200.00 per month for medical and dental expenses, \$70.00 per month for homeowner's or
11 renter's insurance, \$110.00 per month for motor vehicle insurance, \$3,004.26 per year for
12 taxes, and \$100.00 per month in installment payments for hospital bills. Plaintiff does not
13 identify any dependents.

14 Having considered Plaintiff's application, the Court finds that she has not made the
15 showing required by section 1915(a) that she is unable to pay the required fees for this action.
16 Accordingly, the Clerk of the Court is HEREBY DIRECTED to randomly assign a District
17 Judge to this action.

18 Furthermore, it is HEREBY RECOMMENDED that:

19 1. Plaintiff's application to proceed without prepayment of fees and costs (Doc. Nos.
20 2, 5) be DENIED; and

21 2. Plaintiff be required to pay the \$400.00 filing fee in full to proceed with this
22 action.

23 These findings and recommendations are submitted to the United States District Judge
24 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
25 (**14**) days after being served with these findings and recommendations, Plaintiff may file
26 written objections with the Court. Such a document should be captioned "Objections to
27 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
28 objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v.*

¹ *Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: July 24, 2020

/s/ Barbara A. McAuliffe

UNITED STATES MAGISTRATE JUDGE